

1 PAUL L. REIN, Esq. (SBN 43053)
2 JULIE A. OSTIL, Esq. (SBN 215202)
3 LAW OFFICES OF PAUL L. REIN
4 200 Lakeside Dr., Suite A
5 Oakland, CA 94612
6 (510) 832-5001

7 Attorney for Plaintiff:
8 CHERYL SMITH

9 KEVIN L. ELDER, Esq. (SBN 148034)
10 MASON • THOMAS
11 Attorneys at Law
12 919 Reserve Drive, Suite 118
13 Roseville, CA 95678
14 (916) 724-1697

15 Attorney for Defendants:
16 GOLDEN TEE GOLFLAND; ROBERT
17 KENNEY; KENNEY GRANDCHILDREN
18 TRUST; GOLFLAND ENTERTAINMENT
19 CENTERS, INC.; RONALD D. PACKARD
20 TRUST

21 UNITED STATES DISTRICT COURT
22 NORTHERN DISTRICT OF CALIFORNIA

23 CHERYL SMITH,
24
25 Plaintiff,

26 CASE NO. C06-7269 JCS
27 Civil Rights

28 v.

29 **CONSENT DECREE AND [PROPOSED]
30 ORDER**

31 GOLDEN TEE GOLFLAND; ROBERT
32 KENNEY; KENNEY
33 GRANDCHILDREN TRUST;
34 GOLFLAND ENTERTAINMENT
35 CENTERS, INC.; RONALD D.
36 PACKARD TRUST; and DOES 1-50,
37 Inclusive,

38 Defendants.

39 **CONSENT DECREE AND ORDER**

40 1. Plaintiff CHERYL SMITH filed a Complaint in this action on November 22,
41 2006, to obtain personal injury damages and to enforce provisions of the Americans with
42 Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101 et seq., and California civil rights laws

1 against Defendants, GOLDEN TEE GOLFLAND; ROBERT KENNEY; KENNEY
2 GRANDCHILDREN TRUST; GOLFLAND ENTERTAINMENT CENTERS, INC.;
3 RONALD D. PACKARD TRUST; and DOES 1-50, Inclusive, relating to the condition their
4 public accommodations as of her visit of June 19, 2006, and continuing. Plaintiff has alleged
5 that Defendants violated Title III of the ADA and sections 51, 52, 54.1, and 55 of the California
6 Civil Code, and sections 19955 *et seq.*, of the California Health and Safety Code by failing to
7 provide full and equal access to their facilities at the Golden Tee Golfland located at 2533
8 Castro Valley Boulevard, Castro Valley, California.

9 2. Defendants GOLDEN TEE GOLFLAND; ROBERT KENNEY; KENNEY
10 GRANDCHILDREN TRUST; GOLFLAND ENTERTAINMENT CENTERS, INC.; and
11 RONALD D. PACKARD TRUST deny the allegations in the Complaint and by entering into
12 this Consent Decree and Order do not admit liability to any of the allegations in Plaintiff's
13 Complaint filed in this action. The parties hereby enter into this Consent Decree and Order for
14 the purpose of resolving this lawsuit without the need for protracted litigation, and without the
15 admission of any liability.

16
17 **JURISDICTION:**

18 3. The parties to this Consent Decree agree that the Court has jurisdiction of this
19 matter pursuant to 28 USC §1331 for alleged violations of the Americans with Disabilities Act
20 of 1990, 42 USC 12101 *et seq.* and pursuant to supplemental jurisdiction for alleged violations
21 of California Health & Safety Code §19955 *et seq.*, including §19959; Title 24 California Code
22 of Regulations; and California Civil Code §§51; 52; 54; 54.1; §54.3; and 55.

23 4. In order to avoid the costs, expense, and uncertainty of protracted litigation, the
24 parties to this Consent Decree agree to entry of this Order to resolve all claims regarding
25 injunctive relief raised in the Complaint filed with this Court. Accordingly, they agree to the
26 entry of this Order without trial or further adjudication of any issues of fact or law concerning
27 plaintiff's claims for injunctive relief.

28 WHEREFORE, the parties to this Consent Decree hereby agree and stipulate to

1 the Court's entry of this Consent Decree and Order, which provides as follows:

2
3 **SETTLEMENT OF INJUNCTIVE RELIEF:**

4 5. This Order shall be a full, complete, and final disposition and settlement of
5 Plaintiff's claims against Defendants for injunctive relief that have arisen out of the subject
6 Complaint. The parties agree that there has been no admission or finding of liability or
7 violation of the ADA and/or California civil rights laws, and this Consent Decree and Order
8 should not be construed as such.

9 6. The parties agree and stipulate that the corrective work will be performed in
10 compliance with the standards and specifications for disabled access as set forth in the
11 California Code of Regulations, Title 24 and Americans with Disabilities Act Accessibility
12 Guidelines, unless other standards are specifically agreed to in this Consent Decree and Order.

13 a) **Remedial Measures:** The corrective work agreed upon by the parties is as
14 follows:

- 15 i. **Parking:** Defendants will install at least 5 accessible parking spaces in the
16 parking lot, one of which will be a properly configured and signed "van
17 accessible" parking space.
- 18 ii. **Paths of Travel:** Defendants will install an accessible path of travel from the
19 public right-of-way to the front entrance of the clubhouse, and from the
20 accessible parking to the party room and to the clubhouse.
- 21 iii. **Restrooms:** Defendants will convert both restrooms into single-user unisex
22 accommodations, one of which will be made fully accessible.
- 23 iv. **Drinking Fountain:** Defendants will replace the currently installed drinking
24 fountain with a compliant hi-lo type fountain.
- 25 v. **Service Counter:** Defendants will provide a fold-down counter in the
26 clubhouse interior no higher than 34" and at least 36" in length, and will
27 provide signage at the exterior counter directing persons with disabilities to the
28 accessible counter inside for priority service. Defendants will institute and

1 maintain a policy of providing priority service to wheelchair users at the
2 counter inside, and will train employees to place all merchandise and
3 transaction materials on the lowered counter.

4 vi. **Pay Phone:** The pay phone will be made accessible, or will be removed, at
5 defendants' option.

6 vii. **Party Room:** Defendants will weld the current doors together, hinge the new
7 single door on one side, and provide compliant door hardware. Defendants
8 will also institute and maintain a policy of always providing at least one
9 accessible seating space on an accessible route at any function held in the
10 party room.

11 b) **Timing of Injunctive Relief:** Defendants will submit plans for all corrective
12 work to the appropriate governmental agencies within 60 days of entry of this Consent Decree
13 and Order by the court, will commence work within 60 days of receiving approval from the
14 appropriate agencies, and will complete all work within 60 days of commencement. For work
15 not requiring building permits, the work will be completed within 90 days of entry of this
16 Consent Decree and Order by the court. In the event that unforeseen difficulties prevent
17 defendants from completing any of the agreed-upon injunctive relief, defendants or their
18 counsel will notify plaintiff's counsel in writing within 30 days of discovering the delay.
19 Defendants or their counsel will notify plaintiff's counsel when the corrective work is
20 completed, and in any case will provide a status report no later than 180 days from the entry of
21 this Consent Decree.

22
23
24 **DAMAGES, ATTORNEY FEES, LITIGATION EXPENSES, AND COSTS:**

25 7. The parties have not reached an agreement regarding plaintiff's claims
26 for damages, attorney fees, litigation expenses and costs. These issues shall be the subject of
27 further negotiation, litigation, and/or motions to the Court.
28

1 **ENTIRE CONSENT ORDER:**

2 8. This Consent Decree and Order and Attachment A to this Consent Decree,
3 which is incorporated herein by reference as if fully set forth in this document, constitutes the
4 entire agreement between the signing parties on the matters of injunctive relief, and no other
5 statement, promise, or agreement, either written or oral, made by any of the parties or agents of
6 any of the parties, that is not contained in this written Consent Decree and Order, shall be
7 enforceable regarding the matters of injunctive relief described herein. This Consent Decree
8 and Order applies to plaintiff's claims for injunctive relief only and does not resolve plaintiff's
9 claims for damages, attorney fees, litigation expenses and costs, which shall be the subject of
10 further negotiation and/or litigation.
11

12 **CONSENT ORDER BINDING ON PARTIES AND SUCCESSORS IN INTEREST:**

13 9. This Consent Decree and Order shall be binding on Plaintiff CHERYL SMITH;
14 Defendant GOLDEN TEE GOLFLAND; ROBERT KENNEY; KENNEY
15 GRANDCHILDREN TRUST; GOLFLAND ENTERTAINMENT CENTERS, INC.;
16 RONALD D. PACKARD TRUST; and any successors in interest. The parties have a duty to
17 so notify all such successors in interest of the existence and terms of this Consent Decree and
18 Order during the period of the Court's jurisdiction of this Consent Decree and Order.
19

20 **MUTUAL RELEASE AND WAIVER OF CIVIL CODE SECTION 1542 AS TO**
21 **INJUNCTIVE RELIEF ONLY:**

22 10. Each of the parties to this Consent Decree understands and agrees that there is a
23 risk and possibility that, subsequent to the execution of this Consent Decree, any or all of them
24 will incur, suffer, or experience some further loss or damage with respect to the Lawsuit which
25 are unknown or unanticipated at the time this Consent Decree is signed. Except for all
26 obligations required in this Consent Decree, the parties intend that this Consent Decree apply to
27 all such further loss with respect to the Lawsuit, except those caused by the parties subsequent
28 to the execution of this Consent Decree. Therefore, except for all obligations required in this

1 Consent Decree, this Consent Decree shall apply to and cover any and all claims, demands,
2 actions and causes of action by the parties to this Consent Decree with respect to the Lawsuit,
3 whether the same are known, unknown or hereafter discovered or ascertained, and the
4 provisions of Section 1542 of the California Civil Code are hereby expressly waived. Section
5 1542 provides as follows:

6 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
7 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE
8 TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST
9 HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

10 This waiver applies to the injunctive relief aspects of this action only and does not include
11 resolution of plaintiff's claims for damages, attorney fees, litigation expenses and costs.

12 11. Except for all obligations required in this Consent Decree, and exclusive of the
13 referenced continuing claims for damages, statutory attorney fees, litigation expenses and costs,
14 each of the parties to this Consent Decree, on behalf of each, their respective agents,
15 representatives, predecessors, successors, heirs, partners and assigns, releases and forever
16 discharges each other Party and all officers, directors, shareholders, subsidiaries, joint
17 venturers, stockholders, partners, parent companies, employees, agents, attorneys, insurance
18 carriers, heirs, predecessors, and representatives of each other Party, from all claims, demands,
19 actions, and causes of action of whatever kind or nature, presently known or unknown, arising
20 out of or in any way connected with the Lawsuit.

21
22 **TERM OF THE CONSENT DECREE AND ORDER:**

23 12. This Consent Decree and Order shall be in full force and effect for a period of
24 twelve (12) months after the date of entry of this Consent Decree and Order, or until the
25 injunctive relief contemplated by this Order is completed, whichever occurs later. The Court
26 shall retain jurisdiction of this action to enforce provisions of this Order for twelve (12) months
27 after the date of this Consent Decree, or until the injunctive relief contemplated by this Order is
28 completed, whichever occurs later.

1
2 **SEVERABILITY:**

3 13. If any term of this Consent Decree and Order is determined by any court to be
4 unenforceable, the other terms of this Consent Decree and Order shall nonetheless remain in
5 full force and effect.
6

7 **SIGNATORIES BIND PARTIES:**

8 14. Signatories on the behalf of the parties represent that they are authorized to bind
9 the parties to this Consent Decree and Order. This Consent Decree and Order may be signed in
10 counterparts and a facsimile signature shall have the same force and effect as an original
11 signature.
12

13 Dated: January 4, 2008

14 *Cheryl Smith by Julie*
15 Plaintiff CHERYL SMITH *Ostil*

16 Dated: January 4, 2008

17 *Robert Kenney*
18 Defendant GOLDEN TEE GOLFLAND

19 Dated: January 4, 2008

20 *Robert Kenney*
21 Defendant ROBERT KENNEY

22 Dated: January 4, 2008

23 *Robert Kenney*
24 Defendant KENNEY GRANDCHILDREN
25 TRUST

26 Dated: January 4, 2008

27 *Robert Kenney*
28 Defendant GOLFLAND ENTERTAINMENT
CENTERS, INC.

Dated: January __, 2008

Defendant RONALD D. PACKARD TRUST

1 APPROVED AS TO FORM:
2

3 Dated: Dated: January 4, 2008
4

PAUL L. REIN
JULIE A. OSTIL
LAW OFFICES OF PAUL L. REIN

5
6 *Julie Ostil*

7 Attorneys for Plaintiff
8 CHERYL SMITH

9 Dated: January __, 2008
10

KEVIN ELDER
MASON THOMAS, ATTORNEYS AT LAW

11
12 *[Signature]*

13 Attorneys for Defendants
14 GOLDEN TEE GOLFLAND; ROBERT
15 KENNEY; KENNEY GRANDCHILDREN
16 TRUST; GOLFLAND ENTERTAINMENT
17 CENTERS, INC.; RONALD D. PACKARD
18 TRUST

19 **ORDER**

20 Pursuant to stipulation, and for good cause shown, **IT IS SO ORDERED.**

21 Dated: 02/14/08
22

23 HON. JOSE
24 U.S. MAG.

